



AF/2811

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

ROBERT H. HAVEMANN ET AL.

Serial No. 09/216,214 (TI-21570)

Filed December 18, 1998

For: ENHANCEMENTS TO POLYSILICON GATE

Art Unit 2811

Examiner T. Tran

Commissioner for Patents
Washington, D. C. 20231

Sir:

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REPLY BRIEF

In reply to the Examiner's Answer, it is initially noted that the allegation therein at (7) is in error. The Brief on Appeal very clearly states that "[t]he claims do not stand or fall together for reasons set forth hereinbelow under ARGUMENT" under GROUPING OF CLAIMS on page 3.

It is noted that the objection raised as to claims 8 and 9 and indicated as ISSUE 1 in the Brief on Appeal does not appear in the Examiner's Answer and is therefore assumed to have been withdrawn.

With reference to Issue 2, not only has it been clearly demonstrated in the Brief on Appeal that there is support for the alleged unsupported subject matter, but, yet further, the Examiner's Answer is now hedging as to this rejection. Note at page 3 the statement in the

second full paragraph at lines 1 to 3 thereof the statement that “[t]he recitation of source/drain regions each disposed adjacent in and aligned with the silicide layer disposed on the sidewalls in claim 10 can be interpreted as setting forth structure not supported by the specification” (underline ours). It is clear from this statement that the claimed structure is admittedly also supportable by the specification. Appellants stand on their initial explanation as set forth in the Brief on Appeal as opposed to the convoluted theory expressed in the Examiner’s Answer.

With reference to the Response to Argument, the Examiner erroneously refers to the figures as though they are drawn to scale. It is elementary in the patent law that this is not the case. Reference must be made to the specification to determine that which is depicted in the drawings and that has been explained in detail in the Brief on Appeal. It follows that the argument presented in paragraph (11) of the Examiner’s Answer as to the rejection of claim 10 under 35 U.S.C. 112, first paragraph, is based upon an initially invalid premise and must be rejected. Furthermore, the Examiner has provided no support for the technical theory espoused in the Examiner’s Answer and the argument must therefore also be rejected for that reason. Clearly, the Examiner’s position is in contradiction to that of appellants who are highly skilled in the art, Dr. Havemann possessing post doctoral education.

There does not appear to be any discussion in the Examiner’s Answer as to Issue 3 and it is assumed that the rejection in this regard is withdrawn.

As to the explanation of the rejection under 35 U.S.C. 103(a), Issue 4, as discussed commencing at the top of page 8 of the Examiner’s Answer, the argument is based upon the discussion as set forth in the above paragraph and is invalid. Furthermore, the position taken

by the Examiner, even were it arguendo to be accurate, is a new ground of rejection and cannot be considered in this appeal.

For the reasons stated hereinabove and in great detail in the Brief on Appeal, reversal of the final rejection is urged that justice be done in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J-M-C" or similar, with a stylized flourish at the end.

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